

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

MITCHELL DZIK,

Plaintiff,

v.

NEVADA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

Case No.: 2:22-cv-02166-JAD-VCF

**ORDER**

(ECF No. 1)

On December 27, 2022, pro se plaintiff Mitchell Dzik, an inmate in the custody of the Nevada Department of Corrections, submitted a complaint and an application to proceed *in forma pauperis*. (ECF Nos. 1, 1-1). Plaintiff's application to proceed *in forma pauperis* is incomplete because **Plaintiff did not include a financial certificate or an inmate trust fund account statement for the previous six-month period with the application**. The Court will deny Plaintiff's application without prejudice and give Plaintiff the opportunity to correct these deficiencies **by March 20, 2023**.

The Court notes that Plaintiff included a cover letter with his complaint. (ECF No. 1-4.) In the cover letter, Plaintiff states that he is bringing a criminal complaint, and therefore he should not have to pay a filing fee. (*Id.*) However, Plaintiff cannot initiate a criminal case because "the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case." *See United States v. Nixon*, 418 U.S. 683, 693 (1974). Accordingly, Plaintiff cannot initiate a criminal case or pursue criminal charges in this case. To the extent that Plaintiff wishes to pursue any civil claims in this case, he must file a complete application to proceed *in forma pauperis*, or pay the \$402 filing fee in full.

**I. DISCUSSION**

The United States District Court for the District of Nevada must collect filing fees from parties initiating civil actions. 28 U.S.C. § 1914(a). The fee for filing a civil-rights action is \$402, which includes the \$350 filing fee and the \$52 administrative fee. *See*

1 U.S.C. § 1914(b). “Any person who is unable to prepay the fees in a civil case may apply  
 2 to the court for leave to proceed *in forma pauperis*.” Nev. Loc. R. Prac. LSR 1-1. For an  
 3 inmate to apply for *in forma pauperis* status, the inmate must submit **all three** of the  
 4 following documents to the Court: (1) a completed **Application to Proceed in Forma**  
 5 **Pauperis for Inmate**, which is pages 1–3 of the Court’s approved form, that is properly  
 6 signed by the inmate twice on page 3; (2) a completed **Financial Certificate**, which is  
 7 page 4 of the Court’s approved form, that is properly signed by both the inmate and a  
 8 prison or jail official; and (3) a copy of the **inmate’s prison or jail trust fund account**  
 9 **statement for the previous six-month period**. See 28 U.S.C. § 1915(a)(1)–(2); Nev.  
 10 Loc. R. Prac. LSR 1-2. *In forma pauperis* status does not relieve an inmate of his or her  
 11 obligation to pay the filing fee, it just means that the inmate can pay the fee in installments.  
 12 See 28 U.S.C. § 1915(b).

13 As explained above, Plaintiff’s application to proceed *in forma pauperis* is  
 14 incomplete. The Court will therefore deny Plaintiff’s application to proceed *in forma*  
 15 *pauperis* without prejudice and grant Plaintiff an extension of time to either pay the filing  
 16 fee or file a new fully complete application to proceed *in forma pauperis* with all three  
 17 required documents.

## 18 **II. CONCLUSION**

19 It is therefore ordered that the application to proceed *in forma pauperis* (ECF No. 1)  
 20 is denied without prejudice.

21 It is further ordered that Plaintiff has **until March 20, 2023**, to either pay the full  
 22 \$402 filing fee or file a new fully complete application to proceed *in forma pauperis* with  
 23 all three required documents: (1) a completed application with the inmate’s two signatures  
 24 on page 3, (2) a completed financial certificate that is signed both by the inmate and the  
 25 prison or jail official, and (3) a copy of the inmate’s trust fund account statement for the  
 26 previous six-month period.

27 Plaintiff is cautioned that this action will be subject to dismissal without prejudice if  
 28 Plaintiff fails to timely comply with this order. A dismissal without prejudice allows Plaintiff

1 to refile the case with the Court, under a new case number, when Plaintiff can file a  
2 complete application to proceed *in forma pauperis* or pay the required filing fee.

3 The Clerk of the Court is directed to send Plaintiff Mitchell Dzik the approved form  
4 application to proceed *in forma pauperis* for an inmate and instructions for the same and  
5 retain the complaint (ECF No. 1-1) but not file it at this time.

6 DATED THIS 19th day of January 2023.

7  
8   
9 \_\_\_\_\_  
10 UNITED STATES MAGISTRATE JUDGE  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28